

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****115****RSA-3318-2023 (O&M)****Decided on: 19.03.2026****Satbir****...Appellant(s)****Vs.****Mukesh****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA****Present:- Mr. Gaurav Singla, Advocate for the appellant.***********NIDHI GUPTA, J.**

Present Second Appeal has been filed by the defendant against the judgment of reversal dated 11.09.2023 passed by the learned Additional District Judge, Palwal; whereby suit filed by the plaintiff/respondent for possession by way of specific performance of Contract dated 10.10.2011 although dismissed by the Trial Court, has been decreed by the learned First Appellate Court for specific performance.

2. It was pleaded in the plaint that defendant is owner in possession of agricultural land as mentioned in para 1 of the plaint. Vide Agreement to Sell dated 10.10.2011, appellant/defendant had agreed to sell suit land total measuring 18K 13M to the plaintiff for total sale consideration of Rs.58,28,125/-; of which appellant had received Rs.5,83,000/- as earnest money; of which Rs.5,50,000/- was paid through cheque No. 0267782 dated 10.10.2011 drawn on Union Bank of India, Gurugram; and Rs.33,000/- was paid in cash. Target date for execution of



Sale Deed was set for 25.12.2011 on which date plaintiff would pay balance sale consideration of Rs.52,45,125/- upon registration of Sale Deed before Sub Registrar, Palwal. It was further pleaded that on the stipulated date, plaintiff had duly reached the office of Sub Registrar alongwith balance sale consideration, but the defendant did not turn up. It was alleged that after some days, defendant had demanded a sum of Rs.20 lacs, which was also paid through cheque No. 563272 dated 30.01.2012. Thereafter, as the defendant had failed to show inclination to register Sale Deed, plaintiff had sent legal notice dated 19.11.2014 to the defendant. On the assurance of the defendant, plaintiff had reached office of Sub Registrar on 04.12.2014 but the defendant again did not turn up. Plaintiff requested defendant many times but to no avail. Hence, present suit was filed on 23.12.2014.

3. Upon appraisal of the pleadings and the evidence led by the parties, the Civil Judge (Senior Division), Palwal had dismissed the suit of the plaintiff with costs vide judgment and decree dated 24.10.2019. However, the Civil Appeal filed by the plaintiff was accepted by Additional District Judge, Palwal vide the impugned judgment and decree dated 11.09.2023 and suit of the plaintiff was decreed in the following manner: -

“32 In view of the above discussion the trial court wrongly dismissed the suit of the plaintiff. The judgment and decree passed by learned trial Court is hereby set aside and the appeal preferred by the plaintiff is allowed with costs and suit of the plaintiff is decreed with costs to the effect that the defendant shall be liable to execute sale deed in favour of the plaintiff in terms of agreement to sell dated 10.10.2011



within a period of two months from date of judgment on receipt of balance sale consideration failing which the plaintiff shall be entitled to get the same executed through process of Court. The plaintiff shall be entitled to adjust the cost of the appeal towards balance sale consideration.”

Hence, the present second appeal by the defendant.

4. It is *inter alia* submitted by learned counsel for the appellant that learned First Appellate Court was in patent error in decreeing the suit of the plaintiff as it failed to appreciate that plaintiff in her cross-examination as PW1, had pleaded ignorance with respect to the fact that whether she had gone to office of Sub Registrar on the target date i.e. 25.12.2011; and that she has also admitted that she did not know who had prepared the Agreement, and who had signed the Agreement. Agreement to Sell is also not proved as the plaintiff failed to examine any of the attesting witnesses. In fact, plaintiff did not produce the original Agreement to Sell; and she has merely relied on photocopy of Agreement to Sell Ex.P1 and Receipt of earnest money Ex.P2. Plaintiff had failed to explain as to why payment of Rs.20 lacs more was made to the defendant on 25.12.2011 when he was not willing to perform his part of contract.

5. It is further submitted by learned counsel for the appellant that the learned First Appellate Court failed to appreciate that in actual fact, it was a loan amount taken by the plaintiff. No Agreement to sell was entered with the plaintiff. Plaintiff in her cross-examination has admitted that there was a monetary transaction between the parties. Furthermore, the reliance placed by First Appellate Court upon passing of consideration



is a misconstruction of the evidence on record as in doing so, learned First Appellate Court has ignored the proceedings between the parties under the Negotiable Instruments Act. It is submitted that appellant was duly able to establish that submissions under the Negotiable Instruments Act pertain to different transaction and does not pertain to present Agreement. As such, the submission of the appellant is of no value.

6. Furthermore, plaintiff filed the suit on the last date prior to expiry of limitation. It is contended that this itself raises a presumption against the plaintiff, as the time is always made essence of the contract.

7. It is lastly submitted by learned counsel for the appellant that learned First Appellate Court failed to appreciate that vide Sale Deed dated 17.02.2012 Ex.D1, suit land already stood transferred in the name of the plaintiff. As such, plaintiff had no cause of action.

8. It is accordingly prayed that the present appeal be allowed; and the impugned judgment and decree passed by learned First Appellate Court be set aside.

9. No other argument is raised on behalf of the appellant. I have heard learned counsel and perused the case file and the lower Court records in minute detail. I find no merit in the submissions advanced on behalf of the appellant.

10. It has been contended by the appellant that plaintiff has failed to prove the Agreement to Sell dated 10.11.2011/Ex.P1. However, the said contention of the appellant is borne out to be factually incorrect as the plaintiff had duly examined PW2 Babu Ram husband of the plaintiff,



who had deposed by way of his sworn Affidavit Ex.PW2/A and had corroborated the version of the plaintiff that on 10.11.2011 Ex.P1 was executed by the defendant in favour of the plaintiff.

11. Plaintiff has also examined PW3 Sandesh Mohite, SWA Oriental Bank of Commerce, who had brought the summoned record pertaining to cheque No. 563272 dated 30.01.2012 in respect of amount of Rs.20 lacs paid by the plaintiff to the defendant. PW3 has categorically deposed that the above said cheque was deposited in the account of the appellant/defendant. PW3 had also produced the account ledger report Ex.PW3/B.

12. Plaintiff had also examined PW4 Vinod Goyal, who had also deposed regarding the Agreement to Sell Ex.P1 and payment of part sale consideration to the defendant. PW4 had duly deposed that cheque No. 563272 dated 30.01.2012 for an amount of Rs.20 lacs was handed over to the defendant in his presence; following which Receipt Ex.P3 was also prepared in his presence. PW4 has also identified his signature on the margin of the said Receipt.

13. Plaintiff has also examined PW5 Udaivir Singh, Advocate who had deposed that he had got prepared Agreement to Sell in question and also Receipt on the asking of both the parties to the agreement. PW5 has deposed that the Agreement and Receipt were read over to the parties, who after admitting the same to be correct, had duly appended their signatures thereupon. Thereafter, PW5 had appended his seal and signature on the Agreement as well as Receipt.



14. Plaintiff had also examined PW6 K.K. Sharma, Stamp Vendor who had proved that the stamp No. 7390 dated 10.10.2011 was issued in the name of the defendant/Satbir.

15. From the above voluminous evidence, it is clearly established that plaintiff had succeeded in proving Agreement to Sell dated 10.10.2011 (Ex.P1) beyond shadow of doubt. Contentions of the appellant in this regard, are therefore misplaced.

16. Over and above all of the above evidence, it has come on record that a complaint bearing 'NACT no.5727 of 2015' titled as '*Satbir Singh Vs. Mukesh*' had been filed by the appellant against the plaintiff under Section 138 of the Negotiable Instruments Act. The said complaint had been decided vide order dated 20.11.2018 Ex.P7, in which it is recorded that the appellant while appearing therein as CW1 has admitted in his cross-examination that he had executed an Agreement to Sell in favour of the plaintiff qua his land. Appellant while appearing as CW1 had also admitted his photograph on the Agreement to Sell. In the said proceedings, appellant has also admitted that plaintiff had filed suit for specific performance of Agreement to Sell dated 10.10.2011 which is pending. Appellant has also admitted that he got encashed cheque of Rs. 5,50,000/- paid by the plaintiff by way of earnest money at the time of execution of Agreement. Therefore, Agreement to Sell dated 10.10.2011 stands proved from the above admissions made by the appellant himself. It is settled position in law that admission is the best evidence.

The Hon'ble Supreme Court in "**Divisional Manager, United India**



Insurance Co. Ltd. & anr. vs. Samir Chandra Chaudhary” Law Finder Doc Id # 83537, has held that an “*admission of fact is good evidence*” against the person admitting the same unless it is legally explained away to be made under a bona fide mistake. In the present case, there is no such pleading by the appellant that the above said admission was mistakenly made. Instead, Appellant has contented that the abovesaid admissions were in respect of another transaction. However, in the above said NI Act case, the present Agreement and Receipt dated 10.10.2011 were exhibited as Ex.D-1 and Ex.D-2 respectively; which were duly admitted by the appellant. Thus, there can be no ambiguity in respect of the admissions made by the appellant.

17. Relevant findings of the learned First Appellate Court in this regard are contained in para 27 of the impugned judgment dated 11.09.2023. The relevant extract of which reads as under: -

“..... Another important aspect of the present case is the deposition of the defendant in NACT no.5727 of 2015 decided on 20.11.2018 titled Satbir Singh Vs. Mukesh. It is pertinent to mention that complaint under Negotiable Instrument Act was between the same parties. While appearing as CWI the defendant of the present case and the complainant of the complaint case has stated in his cross-examination that he executed an agreement to sell in favour of the plaintiff qua his land. However he refused to recollect the numbers of that land. He admitted his photograph on the agreement to sell but stated that since the agreement was executed many years back, therefore he could not recollect the numbers of the land and what was the sale consideration agreed upon



between the parties. He has stated that in furtherance of the agreement to sell he got executed a sale deed in favour of the plaintiff. He has also admitted this fact that plaintiff had filed a suit for specific performance against him on the basis of the agreement to sell Ex.D1 and Ex.D2 (as exhibited in complaint case) which is pending trial before the Court. He admitted this fact that he got encashed the cheque in sum of Rs. 5,50,000/-. He stated that the land as mentioned in the agreement to sell Ex.D1 (in that case) has not been partitioned between co-sharers.”

18. It may also be pointed out that while appearing as DW2 in the present suit, appellant in his cross-examination has admitted that he is owner in possession of the suit property; that he had seen the photograph affixed on the Agreement Ex.P1 and Receipt Ex.P2 “.....But he could not recognize whether the photographs are his photographs or not.” Further, although appellant denied receiving earnest money of Rs.5,50,000/- vide Receipt Ex.P2 and Rs.20 lacs vide Receipt Ex.P3, but he has admitted that he is having account with Oriental Bank of Commerce at Faridabad. Appellant has further admitted that he never went to the office of Sub Registrar for marking his presence. In any event, appellant has been totally unable to explain as to why the above said hefty payments were made by the plaintiff to the appellant unless they were sale consideration.

19. At this stage, it may be pointed out that appellant has also raised argument that vide Sale Deed dated 17.02.2012 Ex.D1 plaintiff was already owner of the present suit land. However, in his cross-examination



appellant has also admitted the fact that document Ex.D1 is Sale Deed which was executed by his mother and brother. It is important to note that in his cross-examination, appellant has also admitted that *“He has no concern with the Sale Deed. Ex.D1; and that he had never received any payment from the plaintiff qua the said Sale Deed Ex.D1.”*

20. Contention of the appellant that original Agreement to Sell was not brought on record by the plaintiff, is also factually incorrect as the learned First Appellate Court in para 27 of the impugned judgment dated 11.09.2023 has categorically recorded that plaintiff has placed on record the original Agreement to Sell which is Ex.P1, as under: -

“... The plaintiff has placed on record the original agreement to sell which is Ex.P1. It is not denied that the original agreement was produced by the plaintiff at a belated stage when the case was fixed for rebuttal evidence of the plaintiff.”

21. Nonetheless the fact remains that the plaintiff had produced the original Agreement to Sell Ex.P1; and further examined as many as 7 witnesses including herself; Scribe PW5; as also the Stamp Vendor PW6 K.K.Sharma to prove the execution of the said Agreement. It may be pointed out that Stamp Vendor K.K.Sharma who had appeared as PW6 was also got examined by the defendant as DW3, who has admitted in his cross-examination that Stamp Paper at Sr. No.7390 was issued to the defendant.

22. It has next been submitted by learned counsel for the appellant that plaintiff has not been able to prove her readiness and



willingness to execute the Contract as she has not categorically stated that she had gone to office of Sub Registrar on the target date of 25.12.2011. Although plaintiff as PW1 has failed to recollect the specific details of her appearance before the Sub Registrar, but she has not stated anything against the Agreement in question; rather has reiterated that Agreement Ex.P1 was duly executed between the parties. Even despite being grilled thoroughly during cross-examination, plaintiff has reiterated the case as set up by her in the plaint and has not admitted anything contrary to the Agreement to Sell. At no stage, has the plaintiff remotely implied that no such Agreement was executed between the parties. Contention of the appellant is based on a misreading or reading more than what was stated by the appellant in her cross-examination.

23. In any event, from the above facts, it is clear that out of total sale consideration of Rs.58,28,125/-, plaintiff had paid total amount of Rs.36,83,000/-. Moreover, Plaintiff had proved her readiness and willingness by appearing before the Sub Registrar on the target date of 04.12.2014 by way of her Affidavit of Attendance Ex.P6. Plaintiff had also issued legal notice dated 19.11.2014 to the defendant. As such, plaintiff had amply proved her readiness and willingness to perform the contract.

24. In any event, plea of readiness and willingness is not available to the appellant as in his written statement, appellant has denied the very execution of the Agreement to Sell. Defendant has clearly stated in para 3 of the parawise reply that *"Alleged Agreement to Sell dated 10.10.2011 and all the receipts of payments are wrong, false and bogus."*



It is a settled proposition of law that once the defence is of fraud or denial of execution, the plea of readiness and willingness is not available to the defendant. I rely upon judgment of this Court in **“Lal Chand vs. Tek Chand 2012 SCC OnLine P&H 24572”**, the relevant extract of which is as under: -

*“14. Now the second question that is required to be determined by this Court is as to whether the plaintiff is ready and willing to perform his part of the contract or not. In the present case, the stand of the defendant was of clear-cut denial of the execution of the document in question. However, the defendant, as stated earlier, has miserably failed to prove this plea. In such a scenario, the only question that requires to be seen is that whether the plaintiff has fulfilled the basic ingredients as required under Section 16 of the Specific Relief Act or not. It has been held in **Santa Singh v. Binder Singh 2007 (1) R.C.R. (Civil) 162 2006 (4) CCC 608 (P & H)** that in case the defendant has denied the execution of the agreement, the statement of the plaintiff is sufficient to infer that he was ready and willing to perform his part of the contract. In the case in hand, the plaintiff has not only mentioned regarding his readiness and willingness in the plaint he has in fact mentioned the same by examining his power of attorney holder as PW-7 who in no ambiguous terms has stated that the plaintiff was always ready and willing to perform his part of the contract. Further more, the extension of dates which had taken place and was also reduced into writing on the back side of the agreement to sell coupled with the legal notice sent by him to the defendant, further proves and satisfies this Court that the plaintiff was always ready and willing to perform his part of the contract. A coordinate bench of this court in **Jora Singh v. Lakhwinder Kumar 2011 (1) R.C.R. (Civil) 130: 2011 (2) CCC 113** has held*



that when the defendant has denied the execution of the agreement to sell, it means that the defendant was never ready and willing to perform his part of the contract and It does not lie in his mouth to contend that the plaintiff was not ready and willing to perform his part of the contract. In view of the law laid down above and also in the opinion of this Court, that in a case where the defendant has denied the execution of the agreement to sell, he cannot raise the plea of the plaintiff being ready and willing and it only remains between the court and the plaintiff to determine the question of readiness and willingness, I have no hesitation in dismissing this appeal as the same is without any merit The judgments that have been relied upon by learned Counsel for the appellant are peculiar in their own facts and circumstances and the same are not applicable to the present case for the reason that in the present case, the power of attorney holder has been able to prove the readiness and willingness on the part of the plaintiff and also no evidence whatsoever is coming forth on behalf of the defendant to negate the same, Hence, Janki Vashdeo's case (supra) is not applicable to the present case. K. Narindra's case (supra) is also distinguishable on facts, as in the present case I am inclined in not interfering in the relief granted by the learned lower Appellate court of specific performance in view of the peculiar facts and circumstances of the case. In view of the above, finding no question of law much less substantial question of law arising for determination, the present second appeal is hereby dismissed.” (Emphasis added)



25. Reference is also made to a judgment of this Court in **Sant Singh v. Amarjit Singh (Punjab and Haryana) : Law Finder Doc ID # 671030**, wherein it has been held that:

*“3. I am afraid, the aforementioned submission of learned counsel for the appellant-defendant sans merit, for the simple reason that appellant-defendant in the written statement denied the execution of the agreement to sell. It is cardinal/settled proposition of law that a person who denies the execution and registration of the sale deed, cannot be permitted to raise the plea of readiness and willingness. Reference invited to the judgment of **Jora Singh v. Lakhwinder Kumar and others 2011(1) RCR (Civil) 130.** (Emphasis supplied)*

4. As far as, the hardship is concerned, the said plea is also fallacious, for the reason, that no such pleadings/averments have been taken in the written statement. The stand taken by the appellant-defendant was that though he had signed the document, but Naresh Kumar, attesting witness obtained his signatures on the blank paper, but the fact remains, that the signatures were not on the blank paper but on the stamp paper. The plea of defendant-appellant is also falsified. It has also come on record that the defendant-appellant in cross examination admitted his signatures on the agreement to sell and he did not examine the document expert to disbelieve the plea of fraud much less his signatures. On the contrary, the respondent-plaintiff has proved the readiness and willingness on 01.05.2006 as the target date was fixed as 01.05.2006.”

26. From the above facts, it is clear that the case set up by the

appellant is riddled with contradictions and loopholes which have not

been properly explained by learned counsel for the appellant.
27. **Dismissed.**
28. Pending applications, if any, stand(s) disposed of.

19.03.2026

Divyanshi

Whether speaking/reasoned:

Whether reportable:

Yes/No

Yes/No

(NIDHI GUPTA)

JUDGE